MOTION FILED
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No. 88-2098

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

TOWNSHIP OF PARKS,

Petitioner

v.

BABCOCK & WILCOX COMPANY,

Respondent

On petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS, NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS, COMMONWEALTH OF PENNSYLVANIA, AND STATE OF KANSAS

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

1. The Applicant, Pennsylvania State Association of Township Supervisors ("PSATS"), is an unincorporated association authorized under the laws of Pennsylvania to foster and represent the interests of township supervisors and townships of the second class in Pennsylvania. There are 1,458 townships of the second class in Pennsylvania, of which more than 1,450, including the Township served by Petitioners, are members of PSATS.

2. The disposition of the instant case will have a substantial and direct impact upon the conduct of government by the townships represented by PSATS. Although facially involved herein is merely the voluntary dismissal of an action sought by the Plaintiff and the assessment of costs incurred by the Defendant in defending the action, the

overriding effect and impact of the trial court's decision is to oppress the fundamental right of individuals and communities to form and conduct governments as expressions of their individual and collective wills. Accordingly, whether or not townships and municipalities throughout Pennsylvania will be able in the future to conduct the matters of government effectively and in the best interests of the people as intended by the state legislature and guaranteed by the Federal and State Constitutions or to lobby or to participate in other aspects of free speech hinges upon a decision by this Honorable Court to review and rule upon the substantial issues contained in this case. Therefore, PSATS, on behalf of the townships it represents and all similarly situated municipal governments, asserts a valid interest in the instant case.

3. The Applicant, National Association of Towns and Townships ("NATaT"), is an

unincorporated association having offices at 1522 K Street, NW, Suite 730, Washington, D.C. NATaT represents the interests of membertowns, townships, villages and boroughs at the national level, and its membership consists of state organizations, such as PSATS. NATaT asserts essentially the same basis of interest at PSATS, except its interest is much broader. If the instant case passes unreviewed by this Court, there is great potential for harm to municipal governments and the citizens they represent across the breadth of this nation.

4. The question presented in the instant case, simply stated, involves the weight to be accorded to the fundamental right to self-government and the special status of governmental entities as opposed to the possibly legitimate interests of private litigants. The briefs of the parties in the court below have not adequately addressed this

relationship; their discussions are incomplete in that they did not adequately address the wider effect of the disposition of this case; they inadequately discuss the sub issue of whether a constitutional right can be denied by inference as opposed to explicit legislative mandate; they fail to emphasize the significance of this case as a case of first impression before the Supreme Court of the United States; and they fail to adequately describe the full impact of the decision of the trial court, addressed by PSATS and NATaT in the within brief. Further, Applicants have no reason to believe that these arguments on these points will be expanded and made complete in this Court. If Applicants' arguments are approved by this Court, the decision of the court below must be reversed.

5. The consent of Petitioner, Parks Township, to filing of the enclosed brief by Amici was obtained. The consent of

Respondent, Babcock & Wilcox Company, was requested, but no response was received as of the date of this Petition.

CONCLUSION

For the above-stated reasons, we respectfully request leave of this Court to file the attached brief, Amici Curiae.

Respectfully submitted,

WIX, WENGER, WEIDNER,

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QUESTION PRESENTED

Whether a voluntary dismissal granted at the request of Plaintiff under Rule 41(a)(2) of the Federal Rules of Civil Procedure constituted an abuse of discretion by the trial court where the conditions of dismissal imposed by the court failed to effectively bar reinstitution of suit on the same subject matter by Plaintiff and failed to require Plaintiff to compensate a Defendant municipality for expenses incurred by Defendant in defending the withdrawn suit.

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STATEMENT OF THE CASE

Amici respectfuly submits this brief in support of Petitioner's petition for writ of certiorari to the United States Court of Appeals for the Third Circuit in the captioned case and adopts the Statement of the Case set forth in the Petition of the Township of Parks.

INTERESTS OF AMICI CURIAE

The interests of Amici Curiae are set out in the Motion for Leave to File, *supra*, Paragraphs 1 through 4.

ARGUMENT FOR AMICI CURIAE

I. THE FAILURE OF THE LOWER COURT TO DISMISS PLAINTIFF'S CASE WITH PREJUDICE AND TO REQUIRE REIMBURSEMENT OF THE COSTS OF THE LITIGATION TO THE DEFENDANT WAS AN ABUSE OF DISCRETION WHICH SHOULD BE REVERSED BY THIS COURT.

A. The action here complained of is a wrongful deprivation of the people's fundamental right of self-government.

This case, behind its clutter of facts and initially narrow-seeming issues of judicial judgment, concerns one of the most fundamental cornerstones of American society, that is, the right of the people to govern themselves. That right is amply evidenced in the Tenth Amendment to the United States Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

It is further reflected in the provisions of article I, section 2 of the Pennsylvania Constitution:

> All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform, or abolish their government in such

manner as they may think proper.

Pa. Const. art. 1 §2

This right is of so primary a quality that its existence as a principle of American society predates constitutional codification and affirmation.

> That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Governrnent, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Declaration of Independence.

The history of this Court's consideration of cases involving issues of substantive due process is interlaced with the threads of fundamental values which, as in this case, may or may not find specific support in the language of the Constitution, but which are perceptibly elements of the consensus by which society unites itself. *See* G. Gunther,

Constitutional Law 441-445 (1985). The residual right of individuals as members of a society to determine for themselves their government is surely one such fundamental value. Petitioner brings before the Court this most fundamental and organic of rights for validation and protection from incursion by the Respondent company's actions and the trial court's failure to provide adequate remedy.

The impact of the instant case extends far beyond the arena of the particular facts and litigants here involved. With growing frequency as the costs of litigation increase and the economic strictures upon municipal government tighten, disputes between private interests and the public interests represented by municipal governments are resolved, not on a determination of the merits of the issue in question, but on the apprehension by one of the parties that the cost of adjudicating its rights is prohibitively high. The poorer party

therefore succumbs not because of the legal error or inadequacy of its position, but because the judicial system effectively has become economically inaccessible. The burden of the cost of litigation as a factor in determining the outcome of a dispute may well be an element that cannot be eliminated from the adjudicatory process and may fulfill a tolerable or even constructive function in certain instances. These costs of litigation may, however, become so ruinously high that they effectively become the sole or predominant weapon with which one party threatens to gain through attrition what it could not gain in law or equity. When this happens the judicial system is misused and the adjudicatory process is thwarted. The system seeks to mitigate this harm through the implementation of various mechanisms of which the discretionary provision of Federal Rule of Civil Procedure 41(a) is one example.

When the party prejudiced by the economics of litigation is a government created and empowered by the people, however, more than the mere balance between litigants and the rights of specific litigants are at stake. In such a case, as in the present case, the fundamental right of self-governance is diminished because the costs become an obstacle to the proper exercise of self-government, and the government is unable to function as the expression of the collective will of the people. The law and every discretionary facility of the courts in such an instance must be directed toward restoration of the diminished right.

The instant case presents a clear example of abuse and invasion of the right referred to above. Babcock & Wilcox Company initiated and pursued litigation against Parks Township challenging the validity of an ordinance of the Township and charging a violation of Section

1983 of the Federal Civil Rights Act, 42 U.S.C. §1983. Even a casual reading of the record in the case shows the company's claim to have been tenuous at best, and one is hard pressed not to conclude that the company relied not on the weight of its arguments, but the weight of its purse to meet its objective. Nevertheless, the Township persevered, incurring legal expenses worth hundreds of thousands of dollars. Near the point of decision in the case, the company sought leave to withdraw without prejudice. This request was granted over the objection of the Township; Babcock & Wilcox was not required to reimburse the Township for the Township's legal expense incurred defending the litigation now withdrawn.

The result of the litigation and the voluntary withdrawal of Babcock & Wilcox is as follows: Babcock & Wilcox has used the law and judicial system as a bludgeon to try to gain its objectives. By its actions compelling

surrender or response by the Township, the company largely controlled the nature, direction, pace and expense of the litigation. When Babcock & Wilcox determined that further pursuit of the lawsuit was not in its best interest, the company sought to withdraw under favorable circumstances; it was permitted to do so. Babcock & Wilcox incurred only those expenses it chose to incur. Babcock & Wilcox may reinstitute litigation on the same subject matter in the future, if it chooses to do so. Parks Township, like Jonah, survived a ride in the belly of a whale. The Township clung to its principles, refused to succumb to overwhelmingly superior power and resources, and persevered. The embattled ordinance is temporarily intact, but at great cost; furthermore, it may be subject to renewed attack, based upon the permissive conditions imposed by the trial court. The Township, in defending its ordinance, incurred

legal services worth more than $300,000.00. The Township government and its citizens cannot sustain many such victories.

The significant effect of the above events is as follows: Babcock & Wilcox has been allowed to use the judicial system to control its costs, and to withdraw in the time and manner it chose, with its options for future action preserved. A corporate planner might reasonably conclude that the judicial process, although not successful in the immediate instance, was nevertheless a viable and manageable tool for achieving corporate purposes against opposing governmental entities.

The Township, on the other hand, has incurred overwhelming expense, completely beyond its power to control, in order to sustain the validity of its legislation. The inevitable result of this experience is to chill and oppress the function of government as an

expression of the people's intent. This Township and any municipal government cognizant of this case must in the future weigh its proposed enactments and the defense of its enactments against the cost of litigation that may be engendered. The weight of these considerations will fall upon the Township, even if the enactment is an accurate expression of the public intent, and even if that expression is in fact valid, appropriate, and proper under the law. Therefore, that which the people in the exercise of their self-governance would choose to enact and, under the law, could validly enact, may nevertheless not be enacted because the cost of defending the legal action is apprehended to be impracticably high. The Bible tells us that Jonah came forth from the belly of the whale. It does not say how soon he took his next sea cruise.

The effect of the decision below is to

discourage citizens acting through their governments from taking affirmative actions of self-government that may be offensive to wealthy and powerful private interests. Such a result is a wrongful burden upon and diminution of the people's fundamental right to govern themselves. The fact that the invasion of this right occurs by indirection, rather than by overt usurpation, makes the invasion no less clear, no less onerous, no less evil. It operates predictably, substantively, and without rational justification to defeat the rightful expression and implementation of society's intent.

The action of the court below is in every material respect the equivalent of a poll tax. The instant case differs from the latter in that the poll tax was applied by governments against individuals. They share the same intolerable effect, by effectively discouraging individuals and societies from exercising and

participating in their own governance. The judgment below which permitted such a result is an abuse of discretion and should not be tolerated.

B. The trial court's failure to dismiss with prejudice and failure to award counsel fees and costs to Parks Township violated public policy and the principles enunciated in *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

This Court in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), confirmed the liability of municipalities under Section 1983 of the Federal Civil Rights Act, 42 U.S.C. §1983. In so doing, the Court created a current of liability that runs counter to the mainstream of governmental immunity that was long recognized at common law and, after

gradual erosion in case law, was reinstated in the statutes of many states, including Pennsylvania. See Political Subdivision Tort Claims Act, 42 Pa. Const. Stat. §8541 et seq. Subsequent to *Monell*, this Court addressed the issue of municipal liability for punitive damages under Section 1983 of the Federal Civil Rights Act and held that municipal liability was compensatory only and that punitive damages could not be imposed against a municipal defendant. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

Amici submit that the underlying thrust of this Court's decision in *Newport* is applicable in the instant case and dictates a reversal of the trial court's decision. The obvious nominal difference between the subject matter in *Newport* and that of the instant case is acknowledged. However, the Civil Rights Act, as a vehicle of municipal liability, presents one of the few exceptions to governmental

immunity presently in existence. As such, the statute serves as a valuable mechanism for the redress of civil rights violations. The statute is also susceptible to exploitation, however, by plaintiffs whose claims, otherwise blocked by governmental immunity, seek to lever their way into court by cramming the body of their claims into the clothes of a Section 1983 action. Thus outfitted, the cause of action takes on a value at least roughly equal to the cost of defending against it. The record herein gives fair indication that the instant case is just such a one. Seen in this perspective, the municipality's cost of defense becomes a kind of punitive damage, especially when, as in this case, the cause of action is withdrawn, leaving the municipality inflicted with the cost of defending itself against a vanished claim. This Court's remark in *Newport* that the courts should protect "the public from unjust punishment, and the municipalities from undue

fiscal constraints" becomes particularly apt. *Newport, id.* at 263. Throughout the *Newport* decision, this Court evidenced a clear intent that Section 1983 of the Federal Civil Rights Act as applied to municipalities be used solely as a means of supplying compensatory redress to individuals harmed by violations of the Act. "[W]e are sensitive to the possible strain on local treasuries and therefore on services available to the public at large." *Newport, id.* at 271.

The courts must not permit Section 1983 of the Federal Civil Rights Act to become a vehicle for imposing noncompensatory expenses upon municipal defendants, whether such expenses arise by design or by happenstance. The order which in a single stroke permitted Babcock & Wilcox Corporation to withdraw herein and relegated more than $300,000.00 in costs to Defendant was

erroneous and contrary to the rationale of this Court in *Newport*.

C. The ruling below was an abuse of discretion in its failure to recognize and take into account the special nature of municipal governments in contrast to private litigants and the concomitant public policy considerations.

Litigation between like entities (e.g., private individual against private individual) is facilitated by the fact that the litigants are vested with the same or similar sets of rights, privileges and obligations. The adjudication of such disputes is aided by the relative comparability of the litigants' respective rights, privileges and obligations. In contrast, however, the collision in court of private and public interests is fraught with difficulties arising out of the disparate natures of the

private and public litigants. Our country's legal history is replete with principles developed to protect against and remedy incursions by governmental entities upon the interest of private individuals. There also exists a concomitant set of principles designed to preserve the ability of governments to protect the public good from harm by the aggressive self-interest of private parties. These principles are based upon the unique nature of governmental entities in contrast to private parties, and upon the fundamental policy that requires governments to be sustained as vehicles of expression of the peoples' right to self-government. The trial court abused its discretion by failing to take into account this unique status of governments in the law and thus failed to recognize the fundamental right of self-government that is impacted by the order here.

The unique nature of government and its special needs are freely recognized in the courts, particularly in those cases dealing with governmental immunity from civil liability. National, State, and local governments have historically been held immune from civil liability because the individual victim's need to be made whole must give way to the public interest in conducting a viable, effective government. This policy particularly impacts municipalities because their resources are most limited. Unlimited liability may impair the ability of a municipal government to govern efficiently, or at all. See Kennedy and Lynch, *Some Problems of a Sovereign Without Immunity*, 36 S. Cal. L. Rev. 161 (1963).

In *Sambs v. City of Brookfield*, 97 Wis.2d 356, 293 N.W.2d 504, *cert. denied*, 449 U.S. 1035 (1980), the Supreme Court of Wisconsin recognized the difference between a

governmental entity and a private entity. "Government engages in activities of a scope and variety far beyond that of any private business, and governmental operations affect a large number of people." *Id.* at 514.

The Supreme Court of Wisconsin at the same time recognized that the burden of unlimited liability may impose the danger of disrupting the functioning of local government. The Wisconsin Supreme Court, therefore, concluded that a maximum could be imposed on the amount recoverable by victims in the specific situations delineated by the Wisconsin statute. *Sambs, Id.*

The Court of Appeals in Minnesota in the case of *Lienhard v. State*, 417 N.W.2d 119 (Minn. App. 1987), also recognized the legal differences between a public and a private entity. The Minnesota Court of Appeals recognized the fact that if unlimited recovery in tort claims were allowed, there would be a

great risk to the public treasury.

> The state engages in activities of a scope and variety far beyond that of any private business, township, or city. Its operations affect large numbers of people. Permitting unlimited recovery to the victims of state torts could impair the ability of the state to govern efficiently.

Id. at 123.

The Colorado Supreme Court recognized the fact that a public entity, unlike a private one, does not have the option of declaring bankruptcy or going out of business when subject to tort liability, but must instead continue to carry out its responsibility to the public. In *Lee v. Colorado Dept. of Health*, 718 P.2d 221 (Colo. 1986), the court stated that the limitation of liability proceeds from actual differences in the magnitude in character of the functions assumed by public entities, and in the effect of greater potential liability exposure on the public entity's ability to

continue its governmental functions. The court stated so, as follows:

> By limiting the liability of a public entity to a fixed amount, the Governmental Immunity Act protects the public entity against the risk that unforseen and unlimited tort judgments will deplete the public coffers and result in the termination or substantial curtailment of important governmental functions.

Id. at 228.

The Supreme Court of New Mexico has also determined that a limitation of governmental liability is justified. In *Garcia v. Albuquerque Public Schools Board of Education*, 95 N.M. 391, 622 P.2d 699 (1980), the Court gave three reasons why the partial retention of governmental immunity was needed. They are as follows:

> (1) There is a need to protect the public treasuries.
>
> (2) Partial immunity enables the government in its various subdivisions to

function unhampered by the threat of time and energy consuming legal actions which would inhibit the administration of traditional state activities.

(3) In order to effectively carry out its services many of which are financially unprofitable and which would not be provided at a reasonable cost by private enterprise, the government needs the protection provided by some immunity.

Id. at 396, 622 P.2d at 702.

The California Supreme Court, in review of its governmental liability limitation statute, gave four state interest promoted by its statute. They are as follows:

(I) To prevent public funds from being consumed in needless litigation by affording the public entity an opportunity for amicable adjustment before it is charged with the cost of suit and other expenses.

(2) To provide the public entity responsible for making preparations for the fiscal year with an opportunity to be informed in advance as to the indebtedness or liability that it may be expected to meet.

(3) To give the public entity prompt notice of a claim in order to enable it to investigate the merits of the claim while the evidence is still fresh and the witnesses are available.

(4) To afford the public entity a chance to correct the conditions or practices which gave rise to the claim.

Stanley v. City and County of San Francisco, 121 Cal. Rptr. 842, 846, 48 C.A.3d 575, 581 (1975).

In *Chandler Supply Co., Inc. v. City of Boise*, 104 Ida. 480, 660 P.2d 1323 (1983), the Idaho Supreme Court stated that the obvious reason underlying its restricted tort liability for governmental units was that unlimited liability could infringe upon the ability of the government to supply the services for which it has been traditionally responsible. *Id.* at 484, 660 P.2d at 1327.

In our view, the purpose behind the discretionary function exception is to preserve governmental immunity from tort liability for the consequences which arise

> from the planning and operational decision-making necessary to allow governmental units to freely perform their traditional governmental functions.

Id. at 485, 660 P.2d at 1328 (emphasis in original). Thus, it is a generally accepted principle that governmental entities are fundamentally different from private entities in their capacity to be sued by other parties.

The special status of municipal government is recognized in Pennsylvania as well. The legislature reestablished sovereign immunity in tort for political subdivisions in 1978 after its abrogation by the Pennsylvania Supreme Court in *Ayala v. Philadelphia*, 453 Pa. 584, 305 A.2d 877 (1973). The reason for reinstatement was public policy. Unlike private entities, municipalities are ill-equipped to shoulder the burden of unlimited liability. Joint State Government Report, May 1978, at 18.

> [R]etention of sovereign immunity assures that the Commonwealth will not be required to process and defend various litigation brought against it in areas where risk management is totally uncertain . . . or strong public policy suggests that a continuation of the sovereign immunity bar to litigation be continued.

Id. at 19. The Pennsylvania legislature thus reinstated sovereign immunity by passing the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. §8541 et seq.; *Gill v. Northampton Co.*, 88 Pa. Commw. 327, 488 A.2d 1214, *appeal dismissed* 512 Pa. 376, 516 A.2d 1385 (1985).

Pennsylvania courts also do not allow municipalities' property to be attached, or their real property to be subject to a judicial lien. *Fairbanks Co. v. Kirk*, 12 Pa. Super. 210 (1900); *Commonwealth v. Mooney*, 172 Pa. Super. 30, 92 A.2d 258 (1952). These are yet two other examples of the special treatment typically given to municipalities.

One of the basic differences between public entities and private entities is that public entities derive their income from taxes. This consideration was noted in *Newport, supra*, and in Pennsylvania in *Picariello v. Commonwealth*, 54 Pa. Commw. 252, 421 A.2d 477 (1980). In *Picariello*, the Commonwealth Court explained that the special limitation of tort liability afforded municipalities in Pennsylvania was based upon the recognition that, without it, taxpayers could be subject to an intolerable tax burden. *Id.* at 257, 421 A.2d at 480; *Wilson v. Gibson*, 753 P.2d 1349 (Okl. 1988); *Wilson v. Municipality of Anchorage*, 699 P.2d 569 (Ala. 1983); *Garcia v. Albuquerque Public Schools Board of Education*, 95 N.M. 391, 622 P.2d 699 (1980); *accord Seifert v. Standard Paving Co.*, 355 N.E.2d 537 (Ill. 1976); *O'Dell v. School District of Independence*, 521 S.W.2d 403 (Mo. 1975) (en banc); *Krause v. State*, 31 Ohio St.2d

132, 285 N.E.2d 736, *appeal dismissed*, 409 U.S. 1052 (1972).

The principles of public policy which supported governmental immunity at common law and which have motivated its revival and confirmation in statutory law are rationally applicable to the instant case. The ruling below which subjects Parks Township to extensive, uncontrolled costs and the risk of future litigation of the same subject matter violates those principles and, therefore, is an abuse of discretion. The policies which support governmental immunity include the need to protect the public treasury from devastating loss, the need to avoid unpredictable, uncontrollable expenses to government, and the need to avoid such expenses as may cripple or destroy the government's ability to perform its essential functions as an expression of the collective will of the community. *See Gill v. Northampton*

Co., 88 Pa. Commw. 376, 488 A.2d 1219, *appeal dismissed*, 512 Pa. 376, 516 A.2d 1385 (1985), upholding the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. Const. Stat. §8541 et seq.

The importance and strength of these policies are measured by the fact that they override the valued and established policy which favors compensating individuals for the harm caused to them by the wrongful acts of others. The policies supporting immunity overmatch other competing policies because they serve the fundamental right of people to form and conduct an effective government.

The same considerations which support governmental immunity and which apparently were not weighed below dictate a reversal of the trial court's decision in this case. If such considerations are not given effect, financially intimidating litigation procedures will be used by plaintiffs, as was done in this case, to gain

ends which the law would not otherwise grant to them. Governmental entities will be subjected to precisely the same kind of ruinous and uncontrollable costs that the immunity laws and policies are designed to prevent. In such an event, governmental entities may be left with a kind of Hobson's choice: either to settle disputes based upon monetary considerations rather than the public good, or to avoid governmental action that is likely to offend wealthy, litigious private parties. Both alternatives represent an abdication of governmental responsibility and function and an invasion of the people's fundamental right to self-government.

CONCLUSION

The dismissal without prejudice of Babcock & Wilcox's action was an abuse of the trial court's discretion. The decision as legal precedent may effectively prevent small townships in the future from making and enforcing laws for the health, safety, and welfare of its citizens. Enforcement of these laws would be prevented through highly expensive legal tactics employed by disgruntled, would-be plaintiffs. Government of the people, by the people, and for the people must not be undermined by the exercise of a trial court's discretion in favor of coercive legal tactics.

The decision below also failed to take into consideration Parks Township's special status and fiscal fragility as a political subdivision. Consistent with *Monell* and *Newport*, a political subdivision must be treated

differently in our courts, since real differences exist between these public entities and private entities. Political subdivisions' treasuries cannot bear the kind of oppressive litigation costs engendered by Babcock & Wilcox and enforced by the exercise of the trial court's discretion. These litigation costs have become a type of punitive damage imposed upon the political subdivision, contrary to this Court's decision in *Newport*. The trial court thereby abused its discretion by failing to consider Parks Township's status as a political subdivision when considering the allocation of costs and the imposition of conditions in this dismissal.

This case should be reversed and remanded to the trial court for a decision consistent with the principles set forth above.

Respectfully submitted,

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